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| 10/502,411   | 07/23/2004  | Uwe Skultety-Betz    | 3040                | 5780             |
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| Striker Striker & Stenby<br>103 East Neck Road<br>Huntington, NY 11743 |             |                      | RATCLIFFE, LUKE D   |                  |
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* UWE SKULTETY-BETZ and TOBIAS CLAUDIUS

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Appeal 2010-002417  
Application 10/502,411  
Technology Center 3600

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Before JOHN C. KERINS, WILLIAM V. SAINDON and  
MICHAEL L. HOELTER, *Administrative Patent Judges*.

HOELTER, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

This is a decision on appeal, under 35 U.S.C. § 134(a), from a final rejection of claims 1, 3 and 6-12. Claims 2, 4 and 5 have been cancelled (App. Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

### The Claimed Subject Matter

The claimed subject matter pertains to a laser distance measuring device and a position sensor connected to a signal transducer. The position sensor determines spacial orientation and the signal transducer is an optical transducer, an acoustic transducer or a tactile transducer. Independent claim 1 is illustrative of the claims on appeal and is reproduced below:

1. Handheld laser distance measuring device, with a position sensor (22) for determining the spacial orientation of the distance measuring device, wherein the position sensor (22) is connected with a signal transducer (12, 28, 30, 32), whereby the signal transducer (12, 28, 30, 32) is capable of being triggered by the position sensor (22) to emit a perceptible signal which depends on the spacial orientation, wherein the signal transducer is an optical signal transducer (12, 30), an acoustic signal transducer (28) or a tactile signal transducer (32) and wherein the optical signal transducer is a laser (12) that emits light in the visible wavelength range and serves to measure distance.

### References Relied on by the Examiner

|            |              |               |
|------------|--------------|---------------|
| Dunne      | US 5,949,529 | Sep. 7, 1999  |
| Heironimus | US 6,037,874 | Mar. 14, 2000 |

The Rejections on Appeal

1. Claims 1, 6, 8, 9 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Dunne (Ans. 3).
2. Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Dunne (Ans. 4).
3. Claims 3, 10 and 12<sup>1</sup> are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dunne and Heironimus (Ans. 4).

ISSUES

Does Dunne anticipate a laser distance measuring device and a position sensor connected to a signal transducer in which the signal transducer is an optical transducer, an acoustic transducer or a tactile transducer as set forth in claim 1?

Does Dunne anticipate a laser integrated in a housing whereby the position sensor and the signal transducer are also integrated in this housing as set forth in claim 11?

ANALYSIS

Claims 1, 6, 8, 9 and 11 are rejected as being anticipated by Dunne (Ans. 3). Appellants argue claims 1, 6, 8 and 9 as a group and present separate arguments for claim 11 (App. Br. 7, 9). Claims 1 and 11 are separately addressed below, with claims 6, 8 and 9 standing or falling with claim 1 (37 C.F.R. § 1.37(c)(1)(vii) (2011)).

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<sup>1</sup> The Examiner rejected claims 3-5, 10 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Dunne and Heironimus but claims 4 and 5 are cancelled (App. Br. 2).

Appellants dispute that Dunne anticipates claim 1 because “the Examiner did not recite the feature of the optical transducer” and hence “the patent to Dunne does not disclose each and every element of the present invention as defined in claim 1” (App. Br. 7-8, see also Reply Br. 4). The Examiner notes that Appellants claim an optical transducer, an acoustic transducer and a tactile transducer “in the alternative such that a single one of the optical transducer, acoustic transducer, or a tactile transducer would read on the claim” (Ans. 6). We agree with this claim construction. The Examiner finds that “Dunne shows an acoustic signal transducer” and “because the claim was made in the alternative,” the Examiner need not also disclose the other types of transducers (Ans. 6). Appellants do not dispute that Dunne teaches an acoustic transducer and accordingly, we sustain the Examiner’s rejections of claims 1, 6, 8 and 9 (App. Br. 9).

Independent claim 11 also claims in the alternative as does claim 1. Claim 11 further requires a laser “being integrated in a housing” and the position sensor and the signal transducer also “integrated in said housing<sup>2</sup>. ” Appellants contend that these limitations are lacking in Dunne because Dunne teaches separate modular components, each having their own housing and power source (App. Br. 9, Reply Br. 2). The Examiner finds that when these separate components are coupled together, they share “a single housing

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<sup>2</sup> Appellants’ Specification does not define or suggest a particular meaning for either “integrated” or “housing” and thus it is appropriate to consult a general dictionary for their meaning. “Integrated” is defined as “to form or blend into a whole,” “to unite with something else” and “to incorporate into a larger unit.” “Housing” is defined as “something that covers or protects.” WEBSTER’S ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 595, 550 (1989). These definitions are consistent with Appellants’ Specification (Spec. 1:23, 6:6, 6:26).

when in use, the single housing being all of the exterior portion of the system” (Ans. 7).

The Examiner’s reading of the laser’s housing in Dunne as incorporated in the same housing as the transducer is unreasonable. Dunne teaches separate modular components, each in their own housing, which are coupled and uncoupled via connection 16 (Dunne Abstract, 2:62-67, 5:7, 6:42-44, 5:1-6 and 7:4-6). Dunne does not describe these separate components integrated in the same housing as these terms are defined. In fact, Dunne provides a specific reason to keep the components separate, i.e., “so as to minimize distortion or corruption of the earth’s magnetic field being sensed by the compass” (Dunne 3:7-10). Accordingly, we are not persuaded that Dunne anticipates all the limitations of claim 11. We reverse the rejections of claim 11 and its dependent claim 12, in that, for claim 12, the combination of Dunne with Heironimus does not overcome the aforenoted deficiency in the Dunne disclosure.

Claim 7 depends from claim 1 and is rejected as being unpatentable over Dunne (Ans. 4). Appellants present no new arguments and instead contend that this claim should be allowed because it “shares the allowable features of claim 1” (App. Br. 10). We are not persuaded for the reasons stated above and accordingly we sustain the rejection of claim 7.

Claims 3 and 10 depend from claim 1 and are rejected as being unpatentable over Dunne and Heironimus (Ans. 11). Appellants present no new arguments other than that these claims share the features of claim 1 (App. Br. 11). We are not persuaded and we sustain the rejections of claims 3 and 10.

## CONCLUSIONS

Dunne anticipates a laser distance measuring device and a position sensor connected to a signal transducer in which the signal transducer is an optical transducer, an acoustic transducer or a tactile transducer as set forth in claim 1.

Dunne does not anticipate a laser integrated in a housing whereby the position sensor and the signal transducer are also integrated in this housing as set forth in claim 11.

## DECISION

The rejections of claims 1, 3 and 6-10 are affirmed.

The rejections of claims 11 and 12 are reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

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